

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 12418
DATE FILED: 12/4/18

ANGELA MONTGOMERY,

Plaintiff,

-v-

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

17 Civ. 3689 (PAE)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Before the Court is the September 11, 2018 Report and Recommendation of Magistrate Judge Robert W. Lehrburger, recommending that the Court deny the Commissioner of Social Security's motion to dismiss this action as untimely. Dkt. 22 (the "Report"). For the following reasons, the Court adopts the Report in full.

I. Background

The Court incorporates by reference the summary of the facts and procedural history provided in the Report. *See* Report at 1–7. The Court also notes that, the day before Judge Lehrburger filed his Report, the Commissioner of Social Security filed a letter motion seeking leave to withdraw the motion to dismiss, effectively achieving the same result as recommended by the Report. *See* Dkt. 21.

II. Discussion

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the

record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF) (RLE), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC) (AJP), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009), *aff’d* 453 Fed. App’x 88 (2d Cir. 2011)); *see also, e.g.*, *Mims v. Walsh*, No. 04 Civ. 6133 (BSJ) (FM), 2012 WL 6699070, at *2 (S.D.N.Y. Dec. 23, 2012) (quoting *Edwards v. Fischer*, 414 F. Supp. 2d 342, 346–47 (S.D.N.Y. 2006)).

Because neither party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Lehrburger’s thorough and well-reasoned Report reveals no facial error in its conclusions. The Court, therefore, adopts the Report in its entirety.

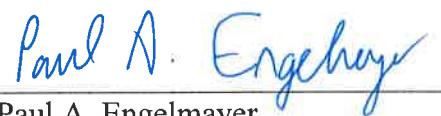
In addition, the Report expressly states that “failure to file timely objections will preclude appellate review.” Report at 19. Accordingly, each party’s failure to object to the Report operates as a waiver of appellate review. *See Monroe v. Hyundai of Manhattan & Westchester*, 372 F. App’x 147, 147–48 (2d Cir. 2010) (summary order) (quoting *Caidor v. Onondaga Cnty.*, 517 F.3d 601, 604 (2d Cir. 2008); *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992)).

CONCLUSION

For the reasons stated herein, the Court adopts the Report in full. Defendant’s motion to dismiss is hereby denied, and the case shall proceed on the merits. To that end, the Court directs defendant to file the certified administrative record in this case by December 11, 2018.

The Court respectfully directs the Clerk of Court to terminate the motion pending at docket 21.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: December 4, 2018
New York, New York